

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

PETER C. JONES,
Petitioner,

v.

Case No. 11-CV-00936

DEIRDRE MORGAN, Warden,
Oakhill Correctional Institution,
Respondent.

ORDER

On October 6, 2011, petitioner Peter Jones filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, asserting that his current sentence was imposed in violation of the laws of the United States. Petitioner was convicted in Milwaukee County Circuit Court of first degree sexual assault of a child and armed robbery. He was sentenced to 7 years imprisonment for the first charge and 6 years imprisonment for the second charge, to run consecutively. Since being imprisoned in 1997, he has been released and reincarcerated several times for parole violations. He is currently incarcerated at Oakhill Correctional Institution, and he alleges that, due to an error in calculating his time served, he is now being detained beyond the end of his permitted sentence.

As a state prisoner, petitioner's claims are properly brought under 28 U.S.C. § 2254, not § 2241. Walker v. O'Brien, 216 F.3d 626, 632–33 (7th Cir. 2000). Federal prisoners must bring habeas corpus challenges to their original conviction and sentence under 28 U.S.C. § 2255, and challenges to the fact or duration of confinement that do not stem from the original conviction under § 2241. Id. State prisoners, on the other hand, should bring all challenges to their confinement under § 2254 because the language in that statute is

broader than § 2255. Id. Section 2254 encompasses any application “in behalf of a person in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). Despite the fact that petitioner completed the form for a § 2241 petition, I can re-characterize the petition as one brought under § 2254. I am reticent to do so too quickly though. Since Rule 9 of the Rules Governing § 2254 Cases places restrictions on second or successive petitions, I want to ensure that it was petitioner’s intent to invoke that statute.

THEREFORE IT IS ORDERED that within thirty (30) days of the date of this order petitioner shall notify the court whether he wishes to re-characterize his petition as a petition under 28 U.S.C. § 2254 or to withdraw his petition.

Dated at Milwaukee, Wisconsin, this 8th day of December 2011.

s/_____
LYNN ADELMAN
District Judge